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Paper No. 5

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SEP 09 2002

In re Application of
Kenneth Gould, Joo Chung,
Michael Sun and Frank Huang
Application No. 09/752,744
Filed: December 29, 2000
Attorney Docket No. 2585-007
Title: System and Method for
Multicast Stream Failure

OFFICE OF PETITIONS
DECISION ON PETITION

This is a decision on the petition filed June 10, 2002, under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The above-identified application became abandoned for failure to reply to the Notice to File Missing Parts of Application mailed February 15, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice, with extensions of time obtainable under 37 CFR 1.136(a). No reply having been timely received and no extensions of time obtained, the above-identified application became abandoned on April 16, 2001. The filing of this petition precedes the mailing of a courtesy Notice of Abandonment.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the reply required to the outstanding Office action or notice, unless previously filed;

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1) above.

The reply required to revive an application is the reply sufficient to have avoided abandonment. The outstanding Notice mailed February 15, 2001 required applicants to timely file an executed oath or declaration; the surcharge for late filing under § 1.16(e); and substitute drawings in compliance with § 1.84 to avoid abandonment. The reply filed on petition does not include an acceptable declaration, the late surcharge or new drawings.

A complete application filed under § 1.53(b) requires an oath or declaration in compliance with § 1.63 and § 1.68. Consistent with statutory requirements, § 1.64(a) further provides that the § 1.63 oath or declaration must be made by all of the actual inventors except as provided for in §§ 1.42, 1.43, 1.47 and 1.67.

Petitioner has submitted a declaration executed by only inventor Kenneth Gould. Although the petition suggests that the basis for submission of such a declaration is that the other inventors are unavailable, no petition (and fee) under § 1.47 accompanied the reply. See also MPEP 409.03. It is further noted that the declaration although identifying all four inventors is not drafted as a declaration of joint inventors executed by inventor Gould on behalf of himself and on behalf of the non-signing inventors (i.e., references should be to "we" not "I").

In order for the application to be revived, petitioner must submit the required reply within the meaning of 37 CFR § 1.137(b)(1) (executed oath or declaration in compliance with § 1.63; the surcharge for late filing under § 1.16(e); and substitute drawings in compliance with § 1.84). Petitioner is advised that the amount of the required reply may increase if the surcharge increases prior to receipt of applicant's payment in the Office. See 37 CFR 1.8. Particularly if payment is made on or after October 1, 2002, consultation of the fee schedule for FY 2003 which will be available at www.uspto.gov is encouraged.

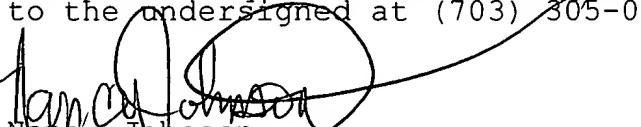
Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0309.


Nancy Johnson
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